

**§ 31.3402(r)-1 Withholding on distributions of Indian gaming profits to tribal members.**

(a) (1) *General rule.* Section 3402(r)(1) requires every person, including an Indian tribe, making a payment to a member of an Indian tribe from the net revenues of any class II or class III gaming activity, as defined in 25 U.S.C. 2703, conducted or licensed by such tribe to deduct and withhold from such payment a tax in an amount equal to such payment's proportionate share of the annualized tax, as that term is defined in section 3402(r)(3).

(2) *Withholding tables.* Except as provided in paragraph (a)(4) of this section, the amount of a payment's proportionate share of the annualized tax shall be determined under the applicable table provided by the Commissioner.

(3) *Annualized amount of payment.* Section 3402(r)(5) provides that payments shall be placed on an annualized basis under regulations prescribed by the Secretary. A payment may be placed on an annualized basis by multiplying the amount of the payment by the total number of payments to be made in a calendar year. For example, a monthly payment may be annualized by multiplying the amount of the payment by 12. Similarly, a quarterly payment may be annualized by multiplying the amount of the payment by 4.

(4) *Alternate withholding procedures—*  
(i) *In general.* Any procedure for determining the amount to be deducted and withheld under section 3402(r) may be used, provided that the amount of tax deducted and withheld is substantially the same as it would be using the tables provided by the Commissioner under paragraph (a)(2) of this section. At the election of an Indian tribe, the amount to be deducted and withheld under section 3402(r) shall be determined in accordance with this alternate procedure.

(ii) *Method of election.* It is sufficient for purposes of making an election under this paragraph (a)(4) that an Indian tribe evidence the election in any reasonable way, including use of a particular method. Thus, no written election is required.

(5) *Additional withholding permitted.* Consistent with the provisions of sec-

tion 3402(p), a tribal member and a tribe may enter into an agreement to provide for the deduction and withholding of additional amounts from payments in order to satisfy the anticipated tax liability of the tribal member. The agreement may be made in a manner similar to that described in § 31.3402(p)-1 (with respect to voluntary withholding agreements between employees and employers).

(b) *Effective date.* This section applies to payments made after December 31, 1994.

[T.D. 8634, 60 FR 65238, Dec. 19, 1995]

**§ 31.3402(t)-0 Outline of the Government withholding regulations.**

This section lists paragraphs contained in §§ 31.3402(t)-1 through 31.3402(t)-7.

*31.3402(t)-1 Withholding requirement on certain payments made by government entities.*

- (a) In general.
- (b) Special rules.
- (c) Deposit and reporting requirements.
- (d) Effective/applicability date.

*31.3402(t)-2 Government entities required to withhold under section 3402(t).*

- (a) In general.
- (b) Government of the United States.
- (c) State.
- (d) Political Subdivision.
- (e) [Reserved]
- (f) Possessions of the United States.
- (g) Passthrough entities.
- (h) Small entity exception.
- (i) Effective/applicability date.

*31.3402(t)-3 Payments subject to withholding.*

- (a) In general.
- (b) Payment threshold of \$10,000.
- (c) No withholding on successive payments.
- (d) Payments made through a payment administrator or to a contractor.
- (e) [Reserved]
- (f) Examples.
- (g) Effective/applicability date.

*31.3402(t)-4 Certain payments excepted from withholding.*

- (a) Payments subject to withholding under chapter 3 or chapter 24 (other than section 3406).
- (b) Payments subject to withholding under section 3406 with backup withholding deducted.
- (c) [Reserved]
- (d) Payments for real property.
- (e) Payments to government entities, tax-exempt organizations, and foreign governments.
- (f) Payments made pursuant to a classified or confidential contract.